IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 312 of 1995

with

CRIMINAL REVISION APPLICATION No 40 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

GUJARAT POLLUTION CONTROLBOARD

Versus

M/S JYOTI CHEMICALS

Appearance:

MR HARESH J TRIVEDI for Petitioner No. 1

MR BY MANKAD, ADDL.PUBLIC PROSECUTOR for Respondent No. 1,7

MR SUDHIR NANAVATI, SR. ADVOCATE with

MR. SANJIV DAVE, ADVOCATE for Respondents

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 03/08/2001

ORAL JUDGEMENT

Gujarat Pollution Control Board has filed this appeal against the judgement and order of acquittal dated 9.8.1993 passed by the learned JMFC, Umargam, whereby he acquitted the respondents accused for the offence under Sections 25, 26, 44 and 47 of Water (Prevention and Control of Pollution) Act, 1974 (for short "the Act"). In the instant case, complaint was filed way back on 15.4.1988 by the complainant before the Court of learned JMFC for the breach of aforesaid provisions of the Act by the respondents accused. Alongwith that complaint, Misc. Application No. 28/1988 was also filed before the learned Magistrate with a prayer to direct the respondents accused not to discharge effluent and pollute the water. with the order of acquittal dated 9.8.1993, the said application No. 28/88 also came to be decided.

The appellant Board filed Criminal Appeal No. 312/95 against the order of acquittal passed by the learned Magistrate and Revision Application No. 40/94 was filed against the order of the learned Magistrate dismissing the application No. 28/88.

On 30th March, 1995, leave was granted and Appeal No. 312/95 was admitted. Revision Application No. 40/94 was ordered to be heard alongwith the said appeal and it was ordered to be posted for final disposal on 12.4.1995. However, this appeal and Revision could not be heard and disposed of till today.

After the filing of the complaint and the commission of the alleged offence, more than 13 years period have passed by now. During this period, so many developments have taken place. On a Public Interest Litigation filed before this Court, the Division Bench of this Court issued certain directions and they are strictly now complied with by one and all including the respondents and a common Effluent Treatment Plant is also operating fulfledged for in all six units of village Sarigam and the respondent firm is one of them.

Under the circumstances, Revision Application No. 40/94 has become infructuous as no further directions are required to be issued by this Court in that Revision.

On merits of the case, admittedly there were some breach of provisions of the Act and the Rules committed by the complainant while taking water sample. However, learned Counsel Shri Trivedi for the appellant Board tried to rely upon the judgement of the learned Single

Judge of this Court in case of Dahyabhai K. Solanki Vs. Kashiram Textiles Mills Pvt.Ltd., reported in 1994 (2) GLR 116, wherein the learned Single Judge of this Court has held that if there is substantial compliance with the provisions of sub-sections (3), (4) and (5) of Section 21 of the Act, then the charge has to be framed. There cannot be any quarrel with the principle laid down by this Court in case of Dahyabhai K. Solanki Vs. Kashiram Textiles Mills Pvt.Ltd. (supra). At the same time, another learned Single Judge of this Court while finally deciding another matter of Dahyabhai K. Solanki Vs. Devine Intermediates & Chemicals, reported in 37 (1) GLR 729 has held that the provisions are not of mandatory nature. It has been further held that once the acts are proved, presumption can be drawn that they are regularly or properly done and it is optional to raise presumption under Section 114 of the Evidence Act. In other words the Court was not bound to raise such presumption. The learned Single Judge has left the question open. Therefore, the proposition that presumption under Section 114 illustration (c) in favour of compliance with the requirement of the Rules was permissible, is open to doubt or debate.

Without expressing any view regarding the aforesaid judgement, on the merits of the case I am of the considered opinion that the view taken by the learned Judge in favour of the respondent accused is not required to be interfered with in this appeal for many reasons.

The purpose of preventing the respondent accused from polluting the water is already achieved since long. There were other factories which were also alleged to have been polluting the water but only the respondent accused firm was prosecuted in Sarigam village. The offence is an old one. Now the respondent accused firm is strictly complying with the provisions of the Act. When two views are possible and the view taken in favour of the respondent accused cannot be said to be perverse, then even if this Court is inclined to take a different view of the matter, then it cannot take a different view of the matter in acquittal appeal.

For all these reasons, I am not inclined to interfere with the impugned order of acquittal in this acquittal appeal. Hence, Criminal Appeal No. 312 of 1995 filed against the order of acquittal passed by the learned JMFC, Umargam is dismissed.

Once the main criminal appeal No. 312/95 is dismissed, then the Revision Application No. 40/94 filed

by the Board is also required to be dismissed, as even otherwise also it does not survive any more in view of the directions issued by this Court in other writ petitions filed in the nature of PIL. Accordingly, the revision is also dismissed.

(B.J.Shethna, J.)

*/Mohandas